

(916) 324-6593

December 26, 1984

Request for Opinion

Dear Mr.

This is in response to your letter of November 30, 1984, wherein you requested a written advisory opinion from this office in reference to the following factual situation:

"Our Client, the Bank of Commerce ("Purchaser") is appealing a field appraisal and subsequent property tax assessment of parcel number 41-220-2100, which property is located at 8920 Miramar Road, San Diego, California ("Subject Property").

"The subject property was previously owned by Lion Property Company ("Seller"). On April 24, 1978, Seller and Buyer entered into a real estate contract of purchase ("Contract") ("Exhibit 1") whereby Buyer agreed to buy and Seller agreed to sell the subject property for a full purchase price of \$216,904.00. (Presumably the then current fair market value.)

"Subsequently, the Buyer deposited the full amount of the purchase price into escrow number 1-376. However, the terms of the contract were never perfected by the Seller.

"Buyer commenced action number 427712 in the Superior Court of the County of San Diego, seeking specific performance on the contract. The Court, sitting as a court of equity, awarded a judgment

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("Exhibit 2") to the Buyer on its complaint for specific performance on November 3, 1981. The Court ordered the Seller to specifically perform all of its obligations in escrow number 1-376 and all of its obligations as contained in the contract between the Seller and Buyer, including but not limited to deposit of a Deed into escrow by the Seller in favor of the Buyer.

"Furthermore, on March 18, 1982, the Court entered an Order Correcting Clerical Error and Amending Judgment Nunc Pro Tunc ("Exhibit 3") in favor of the Buyer. On or about June 4, 1982, the Buyer received a Grant Deed from the Seller."

According to your letter and the documents you provided, in an action of specific performance in the case of Bank of Commerce v. Lyon Miramar Industrial Park, the Superior Court ruled plaintiff (buyer) was entitled to, among other things, specific performance of the sale of certain commercial property effective December 28, 1978, under the provisions stated in escrow number 1-376, dated April 24, 1978. Pursuant to the judgment, the deed conveying the property from Lyon Miramar Industrial Park to the Bank of Commerce was recorded on or about June 4, 1982.

Property Tax Rule 462(n)(1)(A) states as follows:

"Where the transfer is evidenced by recordation of a deed or other document, the date of recordation shall be rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties became specifically enforceable."

In Ellis v. Mihelis, (1963) 60 Cal. 2d 206, 219-220, the Supreme Court observed that "a party to a contract for the purchase or exchange of land who is entitled to a degree of specific performance is also ordinarily entitled to a judgment for the rents and profits from the time he was entitled to a conveyance...The guiding principle with respect to the calculation of the damages incident to a degree of specific performance...is to relate the performance back to the date set in the contract."

The foregoing principles of specific performance were recognized by the Superior Court when it ordered that the Bank of Commerce was entitled to the conveyance of the property and that the sellers were entitled to receive interest on the purchase price from December 28, 1978. Thus, based on Rule 462, the aforementioned case law and the action of the Superior Court in its decision on Bank of Commerce v. Lyon Miramar Industrial Park, it is our opinion that a change in ownership of the subject property occurred on December 28, 1978 -- the date the agreement the parties became specifically enforceable and the date from which the court awarded the sellers interest on the purchase price.

The net effect of this procedure would be that the property would be enrolled at either the sale price or the fair market value on the next lien date following the date of the change of ownership or on March 1, 1979 and then be factored upward at the Proposition 13 rate. The assessor will issue escape assessments for the difference in taxable value as enrolled now and what it will be of the years beginning March 1, 1979 under the provisions of Section 531.2 of the Revenue and Taxation Code.

I believe that the foregoing addresses the points raised in your inquiry. The views expressed in this letter are only advisory in nature. They are not binding upon the county assessor. If I may be of further assistance, please do not hesitate to contact me.

Very truly yours,

Gilbert T. Gembacz  
Tax Counsel

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